



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/171321

PRELIMINARY RECITALS

Pursuant to a petition filed January 8, 2016, under Wis. Stat., §49.45(5), to review a decision by the Dodge County Dept. of Human Services to discontinue Medical Assistance (MA), a hearing was held on February 16, 2016, at Juneau, Wisconsin, with the parties and judge appearing by telephone.

The issue for determination is whether the county correctly denied nursing home MA because petitioner's husband did not cooperate with the renewal application.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Dodge County Dept. of Human Services
143 E. Center Street
Juneau, WI 53039-1371

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 76-year-old resident of Dodge County.
2. Petitioner has been eligible for nursing home MA since September, 2013. She is married, but her husband resides in [REDACTED] and never responded to requests for information when petitioner applied for MA in 2013. She then was treated as a single individual and found eligible for MA.

3. Petitioner was due for an annual renewal by the end of October, 2015. The county requested her husband's financial information and signature. Several attempts to contact her husband were made, but he responded to none of them. They tried his telephone number but the voice mail was disabled.
4. By a notice dated November 10, 2015 the county denied nursing home MA effective November 1, 2015 because petitioner did not comply with verification requirements, specifically because her husband's information and signature were not provided.
5. Petitioner later filed a claim for good cause waiver. As of the hearing date the county had not acted upon it because no proof of impending discharge was provided.
6. Petitioner separated from her husband in the early 2010s and moved back to Wisconsin. She and her family in Wisconsin have had no contact with her husband in the past several years (petitioner's husband is not the father of any children in Wisconsin).

DISCUSSION

Wis. Stat., §49.455(5)(e) provides:

The department may deny to the institutionalized spouse eligibility for Medical Assistance if, when requested by the department, the institutionalized spouse and the community spouse do not provide the total value of their assets and information on income and resources to the extent required under federal Medicaid law or sign the application for Medical Assistance.

Wis. Admin. Code, §DHS 102.01(7) provides:

When an institutionalized person who is applying for MA or an institutionalized recipient whose eligibility for MA is being redetermined has a community spouse, both the institutionalized spouse and his or her spouse, their authorized representatives or someone acting responsibly for the institutionalized spouse or his or her spouse shall sign the application form. Failure of either spouse or that person's authorized representative or someone acting responsibly on behalf of either spouse to sign the application form shall result in ineligibility for the institutionalized spouse under s. DHS 103.075 [the Spousal Impoverishment provision].

Based on those provisions, the Department amended its MA Handbook, §2.5.3, to provide as follows:

All spousal impoverishment Medicaid applications and reviews require the signatures of both the institutionalized person and the community spouse, or of a person authorized to sign for them.

If the institutionalized person's signature is missing, deny the application.

Beginning with applications dated November 11, 2013, if the community spouse refuses to sign the application, refuses to disclose the value of assets, or refuses to provide required information on income or resources, deny the application unless the agency determines that denial of eligibility would result in undue hardship for the person....

For ongoing cases where eligibility was determined without using spousal impoverishment rules, apply the spousal impoverishment rules at the next renewal. This

includes completing an asset assessment using the couple's assets on the first day of the month of the review month and determining eligibility for the next certification period by comparing the current combined assets of the couple to the total of the Community Spouse Asset Share plus the \$2,000 asset limit for the institutionalized spouse.

The requirement that the community spouse sign the application/renewal and cooperate with the compilation of income and asset information was mandated as part of the State 2013-2105 Budget, Wisconsin Act 20. Prior to the changes, if the community spouse refused to cooperate, the agency treated the MA applicant as a single individual. See BEPS/DFS Operations Memo 13-38, dated November 11, 2013.

Now the only option for a person whose spouse refuses to cooperate is to request a good cause waiver. Good cause can be granted only if the applicant submits a copy of a notification from the nursing home stating a date or involuntary discharge and alternative placement location, or other proof that the person will be deprived of medical care such that his health or life would be endangered, or deprived of food, clothing, shelter, or other necessities of life. Handbook, §17.17.5.

The county has not acted on the good cause waiver because the nursing home has not issued a notice of discharge. Nursing home staff testified that the home is hesitant to issue such a notice because petitioner requires nursing home care and there are no other nursing homes in [REDACTED].

I conclude that the county correctly denied nursing home MA because petitioner's husband did not cooperate with the application process. However, I conclude also that the good cause waiver should be granted. There is sufficient proof that petitioner would be deprived of necessary care that would endanger her health if she is ineligible for MA and nursing home care was taken away. Included in my determination is the testimony that petitioner's husband likely has few or no assets that would affect eligibility. If it was probable or even possible that the non-cooperative spouse had assets that could pay for the nursing home resident's care, that ability would be a factor in the good cause determination. Petitioner's son testified that he knows only of the home in [REDACTED] and an annuity that has been disclosed. I looked back at the case notes from petitioner's 2013 application and the only other asset she noted as belonging to her husband was a pick-up truck. Her husband's known income is social security.

The Handbook, §2.5.3 says that continued should be denied unless the denial would result in undue hardship. I conclude that because undue hardship would exist, the application should be processed as if petitioner were a single individual.

CONCLUSIONS OF LAW

Although the county correctly applied the new requirement that a community spouse must sign and cooperate in an application for nursing home MA, petitioner's MA should not be denied based upon a good cause waiver.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to continue petitioner's nursing home MA as if she were a single individual. The county should do so within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

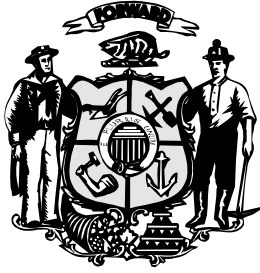
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of February, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 18, 2016.

Dodge County Department of Human Services
Division of Health Care Access and Accountability